

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

## IN AND FOR NEW CASTLE COUNTY

**AMANDA WHITE, and  
VICKY WHITE**

Plaintiffs,

V.

**MICHAEL S. RIEGO**

Defendant.

C.A. No. 04C-10-015 PLA

Submitted: February 11, 2005

Decided: March 3, 2005

**UPON DEFENDANT’S  
MOTION FOR REARGUMENT  
DENIED**

UPON DEFENDANT'S  
MOTION TO DISMISS  
**DENIED**

UPON PLAINTIFFS’  
MOTION FOR JUDGMENT ON THE PLEADINGS  
**GRANTED**

Richard R. Wier, Jr., Esquire, Wilmington, Delaware, Attorney for Plaintiffs

Michael S. Riego, *Pro se.*

ABLEMAN, JUDGE

This opinion disposes of three motions pending in a particularly acrimonious case. Most importantly, the Court finds that the defendant has both admitted and already been adjudicated guilty of the crimes that form of the counts of the Complaint. Therefore, Plaintiffs' Motion For Judgment On The Pleadings must be **GRANTED**.

### ***Facts***

Plaintiff Vicky White ("Vicky") and Defendant Michael Riego ("Michael") were married from 1994 to July 2003. The parties dispute which of them filed for divorce, but that is irrelevant to this litigation. Plaintiff Amanda White ("Amanda") is Vicky's daughter, and lived with her mother and Michael during their marriage.

In July 2003, Vicky, seeking an advantage in the upcoming divorce, decided to seize all of Michael's financial information while he was away on a business trip, and hired a locksmith to break into several of Michael's storage areas. Inside, she discovered lewd photographs and videos of Amanda, and tapes of Amanda's phone conversations. It turned out that Michael had placed hidden cameras in Amanda's bedroom and bathroom, and installed an illegal phone tap device to record her calls. Michael was arrested, charged, and pled guilty to five counts of possessing child pornography, one count of illegally intercepting communications, and one count of invasion of privacy. On June 25, 2004, Michael was sentenced to

seven years imprisonment. He is defending this action *pro se* from the Delaware Correctional Center.

The Complaint centers upon torts that have already been proven by Michael pleading guilty to crimes of the same name, i.e. invasion of privacy and interception of communications. The Complaint also alleges that Michael's criminal acts constitute negligence and intentional infliction of emotional distress.

### ***Pending Motions***

Three motions are currently before the Court. First, Michael moves for reargument of the Court's January 10, 2004 ruling striking portions of his answer. Michael did not respond to the Motion To Strike, and it was granted as unopposed. He pleads his *pro se* status as an excuse for this procedural failure, and seeks permission to reopen the issue so that he may address its merits.

Next, Michael has moved to dismiss the Complaint in its entirety. Michael claims that all the acts complained of, i.e. taking the photos, tapes, and video, were committed before October 1, 2002. Michael believes the two-year statute of limitations for personal injury claims ran before the plaintiffs filed this action on October 1, 2004.

Finally, Plaintiffs have moved for judgment on the pleadings regarding Count I, invasion of privacy. Michael admitted, both in his criminal plea and in his

Answer to this Complaint, that he committed this tort against Amanda. Michael only contests the amount of damage, if any, that his conduct caused.

### ***Discussion***

The Motion For Reargument must be **DENIED**. The Court ruled on the Motion To Strike on January 10, 2005. Michael filed the Motion For Reargument on February 11, 2005. Superior Court Civil Rule 59(e) requires that “[a] motion for reargument shall be served and filed within 5 days after the filing of the Court’s opinion or decision.” The Rule is crystal clear; the Motion For Reargument is time-barred.

This does not mean, of course, that Michael will be unable to offer evidence of the plaintiffs’ mental and substance abuse problems during the trial. The filings in the case make it clear that Michael is mostly admitting liability for the torts, but is contesting damages. This is not a physical injury case; the purported damages must be either mental stress necessitating counseling, or shame and humiliation. Any damages must compensate the plaintiffs for the difference in their mental states now from their mental states before they knew about the torts, and for expenses incurred trying to regain the former. Michael’s averments regarding substance abuse and mental problems are directly relevant to the starting point of this damages calculation. The fact that these allegations were stricken from the answer does not make them any less relevant for trial purposes.

Further, the Court is not concerned about striking Michael's negligence counterclaim. The counterclaim alleges scandalous behavior by Vicky that, if true, could also have been damaging to Amanda. The obvious problem is that Michael has no standing to sue on Amanda's behalf, and the Answer does not allege that Vicky's behavior damaged Michael. A Rule 12(b)(6) motion to dismiss would have been appropriate, but none was filed. The fact that the counterclaim has been disposed of with a motion to strike merely saves all parties the time of filing, responding to, and granting a Rule 12(b)(6) motion.

Michael's Motion To Dismiss must be **DENIED** based on the "time of discovery" rule. This tenet, well recognized in Delaware, states that, in cases where a plaintiff is "blamelessly ignorant" of an "inherently unknowable injury," that statute of limitations does not begin to run until the "harmful affect first manifests itself."<sup>1</sup> Given the disposition of the criminal charges and Michael's obvious efforts to conceal what he had done, the Court can easily determine that the plaintiffs were blamelessly unaware of the torts until Vicky discovered the pornographic images in July 2003. Moreover, the injury, namely shame and embarrassment, was "inherently unknowable" until this discovery. After that, the plaintiffs seem to have slightly delayed filing only because they were awaiting disposition on the criminal charges that would prove this action. This course was

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<sup>1</sup> *Layton v. Allen*, 246 A.2d 794, 797-8 (Del. Supr. 1969).

conscientious and reasonable, and the filing date of October 1, 2004 is therefore within the two-year statute of limitations.

Finally, Plaintiffs' Motion For Judgment On The Pleadings as to Count I – Invasion of Privacy – must be **GRANTED**. Paragraph 18 of the Answer reads:

Admitted as to invasion of privacy but does not have knowledge of impact or effect.

Michael's only response to the motion was to reassert the statute of limitations defense detailed above. Since that defense fails as a matter of law, and there is no dispute of material fact regarding the invasion of privacy, this issue is ripe for a judgment on the pleadings pursuant to Superior Court Civil Rule 12(c). However, since a jury trial has been demanded for the other torts, the Court sees no point in conducting a separate hearing to determine damages for this count. The portion of the motion requesting an immediate hearing is therefore **DENIED**, in favor of allowing a jury to decide the entire case in one trial.

### ***Conclusion***

For these reasons, Defendant's Motion For Reargument is **DENIED**. Defendant's Motion To Dismiss is **DENIED**. Plaintiffs' Motion For Judgment On The Pleadings is **GRANTED**, to the extent expressed in this opinion. Because only the last Motion had any real legal support, and because that Motion depended entirely on the written pleadings, no hearing regarding these issues is necessary.

**IT IS SO ORDERED.**

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Peggy L. Ableman, Judge

Original to Prothonotary – Civil

**cc:** Richard R. Wier, Jr., Esquire  
Michael S. Riego